

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

JOSEPH PERCOCO,  
a/k/a "Herb,"  
ALAIN KALOYEROS,  
a/k/a "Dr. K,"  
PETER GALBRAITH KELLY, JR.,  
a/k/a "Braith,"  
STEVEN AIELLO,  
JOSEPH GERARDI,  
LOUIS CIMINELLI,  
MICHAEL LAIPPLE, and  
KEVIN SCHULER,

Defendants.  
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16-CR-776 (VEC)

ORDER

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 11/2/17
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VALERIE CAPRONI, United States District Judge:

WHEREAS Defendant Kaloyeros moved to suppress, *inter alia*, evidence recovered from a cell phone searched pursuant to a New York state warrant issued May 24, 2016 [Dkt. 172]; and

WHEREAS the Government responded to this aspect of Defendant Kaloyeros's motion in footnote 37 of its omnibus opposition brief, asserting that it did not intend to rely on the New York state warrant for the admissibility of such evidence, and instead intended to apply for a federal warrant for the cell phone [Dkt. 264];

IT IS HEREBY ORDERED that, if the Government has secured another search warrant for the phone as it stated it intended to do, the Government must produce that warrant to Defendants by November 9, 2017. If the Government produces to the Defendants a new search warrant for the cell telephone at issue, Defendant Kaloyeros must inform the Court not later than




November 16, 2017, whether he wishes to make a motion to suppress evidence seized pursuant to the newly-acquired warrant.

IT IS FURTHER ORDERED that, if the Government has secured such a warrant, the Government must provide this Court, in a letter no longer than three pages, by November 9, 2017, the legal basis for mooted Kaloyeros's motion to suppress by obtaining a new warrant;

IT IS FURTHER ORDERED that, if the Government has not yet secured such a warrant, it must, by November 9, 2017, inform the Court when it intends to obtain such a warrant, as well as its legal argument, if any, for mooted Kaloyeros's motion to suppress by obtaining a new warrant. If the Government no longer intends to obtain such a warrant, it must provide its legal argument, if any, why evidence seized pursuant to the New York state warrant should not be suppressed.

**SO ORDERED.**

**Dated: November 2, 2017**  
**New York, NY**

  
**VALERIE CAPRONI**  
**United States District Judge**